

### **REMARKS**

Applicants have amended independent claim 65 to recite a first electrode having a substantially planar base disposed on a first substantially planar substrate, the first electrode having protrusions extending towards the base of the second electrode, and the second electrode having a substantially planar base disposed on a second substantially planar substrate, the second electrode having electrodes extending towards the base of the first electrode, as is recited in the claim. Support for this amendment can be found in the specification, for example, in Fig. 3C. Claims 77 and 78 have also been correspondingly amended to provide proper antecedent basis. No new matter has been added.

New dependent claim 166 has been added, reciting that the distance between a first surface of the first electrode and the substantially planar base of the first electrode varies between 0 and  $l$ , and the distance between a second surface of the second electrode and the substantially planar base of the second electrode varies between 0 and  $m$ . Support for this amendment can be found in the specification, for example, Fig. 3C. Thus, no new matter has been added.

New claim 167 has been added, reciting first reticulated electrode comprises a first electrode base portion and a plurality of first electrode protrusions, and a second, opposing reticulated electrode comprising a second electrode base portion and a plurality of second electrode protrusions, where the first electrode and second electrode are positioned in non-contacting, opposing relation to each other, and wherein each of the first and second electrode protrusions consists essentially of electrode material, as is recited in claim 167. This claim presents, in a different manner, certain distinctions with respect to Yoon (discussed below), and it is not seen where claim 167 is taught in the prior art. Support for this amendment can be found in the specification, for example, Fig. 3C. Thus, no new matter has been added.

With respect to the disclosure of the first and second planar substrates found in the Applicants' device, Applicants note that Figs. 3A-3D illustrate reticulated electrodes having a substantially planar surface, which inherently can be disposed onto a substantially planar substrate. It is further noted that the figures can be relied on for written description support of a claim, in addition to the text of the specification.

Claims 65-73, 77-88, 91-98, 129, 151, and 161-167 are now pending for examination.

Rejections under 35 U.S.C. §103(a) in view of Yoon and Bates

Claims 65-71, 73, 77-85, 87, 91-98, 129, 151, and 161-165 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Yoon, *et al.*, U.S. Patent No. 6,495,283 (“Yoon”) in view of Bates, *et al.*, U.S. Patent No. 5,338,625 (“Bates”).

With respect to independent claim 65 as amended, it is not seen where Yoon discloses or suggests a first electrode having a substantially planar base disposed on a first substantially planar substrate, and a second electrode having a substantially planar base disposed on a second substantially planar substrate, as is recited in independent claim 65, as amended. In Yoon, while anode 4 may be described as having a substantially planar base, cathode 2 cannot be similarly described as having a substantially planar base. Instead, in Yoon, cathode 2 has a “serpentine” profile in cross section. It is not seen how cathode 2 could be considered to be “substantially planar,” nor is it seen why one of ordinary skill in the art would be motivated to use a substantially planar cathode in Yoon, since that would apparently defeat the purpose in Yoon of using a nonplanar electrode (see, e.g., the Abstract of Yoon).

Bates appears to be relied on only for size. Bates does not appear to disclose or suggest a first electrode having a substantially planar base disposed on a first substantially planar substrate, and a second electrode having a substantially planar base disposed on a second substantially planar substrate, as is recited in independent claim 65, as amended.

Accordingly, it is believed that the combination of Yoon and Bates, to the extent that such a combination could be made (which Applicants do not concede) does not render obvious independent claim 65, and it is respectfully requested that this rejection be withdrawn. The remaining claims each depend directly, or indirectly, from independent claim 65, and are believed to be allowable for at least the above-mentioned reasons. Withdrawal of the rejection of these claims is also respectfully requested.

Rejection under 35 U.S.C. §103(a) in view of Yoon, Bates, and Chen

Claims 72, 86, and 88 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Yoon in view of Bates, and further in view of Chen, U.S. Patent No. 5,677,080 (“Chen”).

Claims 72, 86, and 88 each depend, directly or indirectly, from claim 65. For at least the reasons explained above with respect to the rejection under §103(a) in view of Yoon and Bates, the premise of the rejection of independent claim 65 (i.e., that Yoon and Bates render claim 65 obvious) is believed to be incorrect. Accordingly, while Applicants do not concede that there would have been any suggestion or motivation to combine Yoon, Bates, and Chen in the manner suggested in the Office Action, the present rejection can not stand, regardless. Thus, withdrawal of the rejection of claims 72, 86, and 88 is respectfully requested.


### CONCLUSION

In view of the foregoing, it is believed the pending application is in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this response, that the application is not in condition for allowance, the Examiner is requested to call the undersigned at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge Deposit Account No. 23/2825, under Order No. M0925.70108US00 from which the undersigned is authorized to draw.

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Respectfully submitted,

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